

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FINITO SERVICES LLC dba SUNSPOT
INNS, RESORTS & VACATION RENTALS,

Plaintiff,

v.

COMFY SUNRISE VILLA LLC; and
GENWANG KEVIN WEN, individually,

Defendants.

Civil Action No. 11-774

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiff Finito Services LLC dba Sunspot Inns, Resorts & Vacation Rentals ("Sunspot")
hereby alleges the following causes of action against Defendants:

I. PARTIES

1. Plaintiff Sunspot is a Washington limited liability company having a place of
business in Seattle, Washington.

2. Defendant Comfy Sunrise Villa LLC, dba Sunrise Villa ("Sunrise Villa") is a
Washington limited liability company having a principal place of business and registered agent
Genwang Wen, 12819 SE 38th Street, Suite 282, Bellevue, Washington 98006.

3. Defendant Genwang Kevin Wen is the manager of Sunrise Villa and is directly
responsible for controlling Sunrise Villa, including its marketing. All activities alleged herein
were carried out under the direction and control of Wen.

II. JURISDICTION AND VENUE

4. This action arises under the copyright laws of the United States of America, 17 U.S.C. § 101 *et seq.* Jurisdiction over the copyright claim is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in this Court pursuant to 28 USC §§ 1391(b) and (c) and 1400(a). Defendants reside in, have transacted business in and have had continuous and systematic contacts with the Western District of Washington. A substantial part of the events or omissions giving rise to the claims occurred in this district and a substantial part of the property that is the subject of the action is situated in Washington.

III. SUNSPOT'S BUSINESS AND COPYRIGHTS

6. Sunspot is a network of independently owned inns, resorts and vacation rental management companies. Sunspot provides support services to assist with reservations, accounting, administration and front office services for home owner associations, resorts and individual vacation property owners.

7. As part of its services, Sunspot commissions non-stock, high-dynamic range (HDR), commercial photographs of properties it manages for use in their marketing and rental. Among others, Sunspot is the copyright owner of such high quality photographs to the vacation rental property referred to as the "Sunrise Villa" located in Leavenworth, Washington. Sunspot secured federal copyright protection of these photographs under U.S. Copyright Registration Nos. VAu1010970 and/or VAu1025789 (hereinafter "Sunrise Villa photographs"). Sunspot has not licensed its Sunrise Villa photographs to any Defendants herein.

8. Without the permission of Sunspot, Defendants selected, modified and placed Sunrise Villa photographs in their rental marketing materials on multiple Internet vacation rental websites, including www.vacationsfrbo.com, www.vacationhomes.com and www.vacationrentaldirect.com. On information and belief, Defendants widely distributed and

publicly displayed Sunspot's Sunrise Villa photographs. Defendants used Sunspot's copyrighted photographs for the purpose of marketing and renting the property for commercial gain.

9. Defendants have at all relevant times been aware of Sunspot's copyrighted photographs. Defendants have no license from Sunspot and despite notice of their wrongful activities Defendants deliberately and willfully infringed Sunspot's copyrights.

10. Defendants have removed the infringing Sunrise Villa photographs from at least certain of their rental marketing materials but have refused to compensate Sunspot for the unauthorized uses.

IV. CAUSE OF ACTION—COPYRIGHT INFRINGEMENT

11. Sunspot realleges the preceding paragraphs of this complaint.

12. By copying, modifying and creating one or more derivative works and/or displaying and distributing Sunspot's Sunrise Villa photographs, Defendants' actions constitute copyright infringement in violation of 17 U.S.C. § 101 *et seq.*

13. Defendants have facilitated possible infringement of others by failing to display Sunspot's work with a credit and copyright notice attached and by publishing the Sunrise Villa photographs on the Internet.

14. Defendants have profited from unauthorized use of Sunspot's copyrighted work.

15. Defendants had access to Sunspot's copyrighted materials and knowledge of Sunspot's ownership rights in the Sunrise Villa photographs and their infringing activities were deliberate, knowing, willful, and malicious, and were designed to provide Defendants with an economic advantage over Sunspot or benefit at Sunspot's expense. As a result of Defendants' willfully infringing acts, Sunspot has been injured and has suffered damages in an amount to be proved at trial.

16. In addition to actual damages, Sunspot claims such other remedies to which it may be entitled by law, including Defendants' revenues and profits pursuant to 17 U.S.C. 504(b); at Sunspot's election and in the alternative, statutory damages up to \$150,000 pursuant to

1 17 U.S.C. § 504(c); injunctive relief pursuant to 17 U.S.C. § 502; impounding and destruction of
 2 infringing articles pursuant to 17 U.S.C. § 503; and attorney's fees and costs pursuant to
 3 17 U.S.C. § 505 and otherwise allowed by law.

4 **V. PRAYER FOR RELIEF**

5 WHEREFORE, Sunspot prays for the following alternative and cumulative relief:

- 6 1. An order preliminarily and permanently enjoining Defendants and all persons in
 7 active concert or participation with any of them from copying or creating
 8 derivative works based on Sunspot's copyrights;
- 9 2. An order, as specifically provided by 17 U.S.C. § 503 and other applicable law,
 10 for seizure to recover, impound, and destroy all things infringing Sunspot's
 11 copyrighted materials, including any video, written, or digitally maintained
 12 materials Defendants may possess or have under their control, or under the
 13 control of any of Defendants' respective officers, agents, servants, employees,
 14 attorneys, or any other person acting in concert or participation with Defendants;
- 15 3. An order requiring Defendants to file with this Court and serve on Sunspot, within
 16 30 days of service of this order, a report in writing under oath setting forth in
 17 detail the manner and form in which Defendants have complied with the terms of
 18 the ordered relief;
- 19 4. Actual or statutory damages in an amount sufficient to compensate Sunspot for all
 20 injury sustained as a result of Defendants' wrongful activities, including wrongful
 21 profits of Defendants, as provided under applicable law;
- 22 5. Treble the amount of damages recovered by Sunspot or other exemplary damages
 23 and all of its litigation expenses, including reasonable attorneys' fees and costs, as
 24 provided under applicable law; and
- 25 6. Such other and further relief as the Court may deem just.

26 RESPECTFULLY SUBMITTED this 6th day of May, 2011.

s/David A. Lowe, WSBA No. 24,453

Email: lowe@blgip.com

BLACK LOWE & GRAHAM^{PLLC}

701 Fifth Avenue, Suite 4800

Seattle, WA 98104

Attorneys for Finito Services^{LLC} dba

Sunspot Inns, Resorts & Vacation Rentals